

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**MELVIN SMITH and STAN FOWLER,**

**Plaintiffs,<sup>1</sup>**

**v.**

**No. 15-cv-1153 SMV/GBW**

**AUTO-OWNERS INSURANCE COMPANY,**

**Defendant.**

**ORDER DENYING DEFENDANT’S MOTION TO STRIKE  
PLAINTIFF’S UNTIMELY RESPONSES**

THIS MATTER is before the Court on Defendant’s Expedited Motion to Strike Plaintiff’s Untimely Responses [Doc. 108], filed March 17, 2017. Plaintiff responded on March 21, 2017. [Doc. 110]. Defendant filed a Notice of Completion of Briefing that same day. [Doc. 111]. Having considered the briefing and being otherwise fully advised in the premises,

**IT IS ORDERED, ADJUDGED, AND DECREED** that Defendant’s Expedited Motion to Strike Plaintiff’s Untimely Responses [Doc. 108] is **DENIED**. Plaintiff’s responses [Docs. 106, 107] to Defendant’s Motion for Summary Judgment [Doc. 99] and Motion to Exclude [Doc. 97] are not “pleadings” subject to a motion to strike. *See* Fed. R. Civ. P. 12(f); *Estate of Anderson v. Denny’s Inc.*, 291 F.R.D. 622, 634–35 (D.N.M. 2013). The Court will not at this time rule on Plaintiff’s Motion for Extension of Time to Respond [Doc. 112]. The Court will determine whether to consider Plaintiff’s untimely responses when it undertakes a substantive review of Defendant’s motions.

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<sup>1</sup> Judgment was entered as to Plaintiff Stan Fowler on November 2, 2016. [Doc. 84]. Melvin Smith is the sole remaining Plaintiff in this case.

**IT IS FURTHER ORDERED** that Defendant's reply deadline is hereby **EXTENDED**. Defendant's replies in support of its Motion for Summary Judgment [Doc. 99] and Motion to Exclude [Doc. 97] are due by **April 4, 2017**. The Court's consideration of Defendant's replies will be contingent on its determination whether to consider Plaintiff's untimely responses.

**IT IS SO ORDERED.**



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**STEPHAN M. VIDMAR**  
**United States Magistrate Judge**  
**Presiding by Consent**